

ITEM: 18

SUBJECT: Preston and Lois Avery, Contra Costa County –

BOARD ACTION: *Consideration of Resolution Approving Cleanup and Abatement Order R5-2005-0711*

BACKGROUND: Preston and Lois Avery, (hereafter the Discharger) owns approximately 70-acres of land on Willow Road West, Bethel Island in Contra Costa County. The Discharger has been filling wetlands on the property for 11 years.

In May 2005, Regional Board staff, responding to local complaints, inspected the property and observed a backhoe operator installing culverts and filling wetlands with soil and other earthen materials. Regional Board staff observed the Discharger pushing the soil and sediment into waters of the state “wetlands.”

On 10 June 2005 the Executive Officer issued Cleanup and Abatement Order Number R5-2005-0711 (CAO) to the Discharger. The Discharger filled wetlands, without the necessary permits from either the Corps of Engineers or the Regional Board. The CAO required the Discharger to cease discharging waste to wetlands and other waters and to restore the filled wetlands by 30 September 2005. The Discharger has failed to comply with the CAO and has petitioned the State Water Resources Control Board to review the CAO. In the petition to State Board the Discharger alleges that their property is not a wetland and that petitioners are engaged in activities to maintain drainage improvements and that these activities have been permitted by Contra Costa County.

The U.S. Army Corps of Engineers (Corps) in 1994 determined the area contained jurisdictional wetlands. The Corps issued an order requiring the Discharger to cease wetland fill activities, remove fill material and to obtain an “after-the-fact” Section 404 permit for the activities. The Discharger failed to remove the fill material and over an eleven-year period accepted earthen materials, soil and sediment, which was discharged to wetlands. On 7 September 2005 the Corps issued a subsequent letter indicating that it considered the unauthorized discharges to be “...willful and flagrant.” The Corps determined that 70-acres of waters of the United States, including wetlands are present on the Discharger’s project area. The Corps also determined that approximately 6 acres of wetlands had been filled and again directed the Discharger to cease and desist from any additional discharges of fill material into wetlands adjacent to Piper Slough.

ISSUES: Did the Discharger’s action to fill wetlands violate the federal Clean Water Act? Did the failure to obtain the necessary permits violate the California Water Code? Was the issuance of the CAO an appropriate action by the Executive Officer?

RECOMMENDATION: Adopt the proposed resolution.

Mgmt. Review \_\_\_\_\_  
Legal Review \_\_\_\_\_